

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 765

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Richard J. Berry

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; LIMITING THE OPTION OF CERTAIN RETIREES TO RETURN TO WORK WHILE RECEIVING A RETIREMENT PENSION; RECONCILING CONFLICTING AMENDMENTS TO A SECTION OF LAW IN LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

.176401.2

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 (1) a written application for normal
2 retirement, in the form prescribed by the association, is filed
3 with the association;

4 (2) employment is terminated with all
5 employers covered by any state system or the educational
6 retirement system;

7 (3) the member selects an effective date of
8 retirement that is the first day of a calendar month; and

9 (4) the member meets the age and service
10 credit requirement for normal retirement specified in the
11 coverage plan applicable to the member.

12 B. The amount of normal retirement pension is
13 determined in accordance with the coverage plan applicable to
14 the member.

15 C. Except as provided in Subsection D or E of this
16 section, a retired member may be subsequently employed by an
17 affiliated public employer if the following conditions apply:

18 (1) the member has not been employed as an
19 employee of an affiliated public employer or retained as an
20 independent contractor performing the same duties as were
21 performed before retirement for at least ninety consecutive
22 days from the date of retirement to the commencement of
23 employment or reemployment with an affiliated public employer.
24 If the retired member returns to employment without first
25 completing ninety consecutive days of retirement, [~~a~~] the

.176401.2

underscored material = new
[bracketed material] = delete

1 retired member's pension shall be suspended immediately; ~~[and~~
2 ~~the previously retired member shall become a member; and~~

3 ~~(b) upon termination of the subsequent~~
4 ~~employment, the previously retired member's pension shall be~~
5 ~~calculated pursuant to Paragraph (2) of Subsection E of this~~
6 ~~section]~~

7 (2) the retired member's pension shall be
8 suspended on the first day of the month following the month in
9 which the retired member's earnings after July 1, 2009 from the
10 subsequent employment exceed the final average salary that was
11 used to calculate the retired member's pension; provided that
12 the earnings limitation of this paragraph shall not apply to a
13 retired member subsequently employed:

14 (a) in a position for which the annual
15 salary is less than eighteen thousand dollars (\$18,000); or

16 (b) in a public safety or public health
17 position;

18 ~~[(2)]~~ (3) effective the first day of the month
19 following the month in which the retired member's earnings
20 total twenty-five thousand dollars (\$25,000) during a calendar
21 year, a retired member who returns to employment shall be
22 required to make contributions to the fund as specified in the
23 Public Employees Retirement Act; ~~[provided, however, that after~~
24 ~~December 31, 2006, no additional contributions shall be~~
25 ~~required pursuant to this paragraph;~~

.176401.2

underscored material = new
[bracketed material] = delete

1 ~~(3)~~ (4) until the subsequent employment is
2 terminated, the affiliated public employer that employs the
3 retired member shall make contributions to the fund in the
4 amount specified in the Public Employees Retirement Act or in a
5 higher amount adjusted for full actuarial cost as determined
6 annually by the association; and

7 ~~(4)~~ (5) a retired member who returns to
8 employment during retirement pursuant to this subsection is
9 entitled to receive retirement benefits but is not entitled to
10 acquire service credit or to acquire or purchase service credit
11 in the future for the period of the retired member's
12 reemployment with an affiliated public employer.

13 D. ~~[The provisions of Paragraphs (2) and (3) of~~
14 ~~Subsection C of this section that require employee or employer~~
15 ~~contributions]~~ Except for the provisions of Paragraph (5) of
16 Subsection C of this section, the provisions of the other
17 paragraphs of that subsection do not apply to:

18 (1) a retired member who is appointed chief of
19 police of an affiliated public employer, other than the
20 affiliated public employer from which the retired member
21 retired, or who is appointed undersheriff; provided that:

22 (a) the retired member files an
23 irrevocable exemption from membership with the association
24 within thirty days of appointment;

25 (b) each sheriff's office shall be

underscored material = new
[bracketed material] = delete

1 limited to one undersheriff qualifying pursuant to this
2 paragraph;

3 (c) the irrevocable exemption shall be
4 for the chief of police's or the undersheriff's term of office;
5 and

6 (d) filing an irrevocable exemption
7 shall irrevocably bar the retired member from acquiring service
8 credit for the period of exemption from membership; or

9 (2) a retired member employed by the
10 legislature for legislative session work.

11 E. At any time during a retired member's subsequent
12 employment pursuant to Subsection C of this section, the
13 retired member may elect to suspend the pension.

14 F. When [the] a pension is suspended pursuant to
15 Paragraph (1) or (2) of Subsection C of this section or
16 Subsection E of this section, the following conditions shall
17 apply:

18 (1) the retired member who is subsequently
19 employed by an affiliated public employer shall become a
20 member. The previously retired member and the subsequent
21 affiliated public employer shall make the required employee and
22 employer contributions, and the previously retired member shall
23 accrue service credit for the period of subsequent employment;
24 and

25 (2) when a previously retired member

.176401.2

underscoring material = new
[bracketed material] = delete

1 terminates the subsequent employment with an affiliated public
2 employer, [~~he~~] the previously retired member shall retire
3 according to the provisions of the Public Employees Retirement
4 Act, subject to the following conditions:

5 (a) payment of the pension shall resume
6 in accordance with the provisions of Subsection A of this
7 section;

8 (b) unless the previously retired member
9 accrued at least three years of service credit on account of
10 the subsequent employment, the recalculation of pension shall:
11 1) employ the form of payment selected by the previously
12 retired member at the time of the first retirement; and 2) use
13 the provisions of the coverage plan applicable to the member on
14 the date of the first retirement; and

15 (c) the recalculated pension shall not
16 be less than the amount of the suspended pension.

17 [~~F.~~] G. The pension of a member who has three or
18 more years of service credit under each of two or more coverage
19 plans shall be determined in accordance with the coverage plan
20 that produces the highest pension. The pension of a member who
21 has service credit under two or more coverage plans but who has
22 three or more years of service credit under only one of those
23 coverage plans shall be determined in accordance with the
24 coverage plan in which the member has three or more years of
25 service credit. If the service credit is acquired under two

.176401.2

underscoring material = new
[bracketed material] = delete

1 different coverage plans applied to the same affiliated public
2 employer as a consequence of an election by the members,
3 adoption by the affiliated public employer or a change in the
4 law that results in the application of a coverage plan with a
5 greater pension, the greater pension shall be paid a member
6 retiring from the affiliated public employer under which the
7 change in coverage plan took place regardless of the amount of
8 service credit under the coverage plan producing the greater
9 pension; provided the member has three or more years of
10 continuous employment with that affiliated public employer
11 immediately preceding or immediately preceding and immediately
12 following the date the coverage plan changed. The provisions
13 of each coverage plan for the purpose of this subsection shall
14 be those in effect at the time the member ceased to be covered
15 by the coverage plan. "Service credit", for the purposes of
16 this subsection, shall be only personal service rendered an
17 affiliated public employer and credited to the member under the
18 provisions of Subsection A of Section 10-11-4 NMSA 1978.
19 Service credited under any other provision of the Public
20 Employees Retirement Act shall not be used to satisfy the
21 three-year service credit requirement of this subsection."

22 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is
23 repealed.

24 Section 3. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.

.176401.2